

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 24 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

C.F. Communications Corp., et. al.,

Complainants,

v.

Century Telephone of Wisconsin, Inc.,
et. al.,

Defendants.

EB Docket No. 01-99 /

File No. E-93-49

To: **Arthur I. Steinberg**
Administrative Law Judge

**EMERGENCY MOTION AND MEMORANDUM OF COMPLAINANT
NEW YORK CITY TELECOMMUNICATIONS COMPANY, INC. FOR
EXTENSION OF TIME TO RESPOND TO DEFENDANT SOUTHWESTERN
BELL TELEPHONE COMPANY'S MOTION FOR SUMMARY DECISION**

Complainant New York City Telecommunications Company, Inc. (f/k/a Millicom Services Company) ("NYC Telecom") respectfully requests an extension until August 16, 2001 to oppose the motion for summary decision that was filed and served on July 17, 2001 (the "Motion for Summary Decision") by defendant Southwestern Bell Telephone Company ("SBC"). NYC Telecom seeks this extension so that it will have the opportunity to review relevant discovery that Your Honor has ordered SBC to produce. Because SBC's discovery responses are not due until August 2, 2001, two days *after* NYC Telecom's opposition is due, and the discovery is relevant to NYC Telecom's opposition to the Motion for Summary Decision, NYC sought an extension of time from SBC. SBC's counsel refused to grant NYC Telecom any extension of time beyond the current July 31

deadline, hence requiring this motion for an extension. *See* Commission Rule 1.251, 47 CFR § 1.251; *see* attached Certification of Good Faith Attempt to Resolve Dispute.

SBC's Motion for Summary Decision claims that NYC Telecom did not pay any of the improperly assessed EUCL fees during the limitations period prescribed by Commission Rule 1.718, 47 CFR §1.718, and has, therefore, failed to "sustain any recoverable damages" Motion for Summary Decision at 4. Your Honor's order directs SBC to answer, in whole or in part, 35 separate interrogatories propounded in NYC Telecom's First Set of Interrogatories, and to produce documents in response to 26 separate documents requests set forth in NYC Telecom's First Set of Requests for the Production of Documents, including requests directed towards the parties' payment dispute. Many of these materials therefore directly bear upon the issues raised in the Motion for Summary Decision, including but not limited to, records reflecting (i) the assessment, payment, non-payment, and communications regarding, the EUCL charges; (ii) SBC's policies and practices with respect to the termination of telephone service for customers that failed to pay their bills; and (iii) SBC's policies and practices concerning the retention, destruction and location of potentially responsive documents.¹

To prevail on its Motion for Summary Decision, SBC must demonstrate the absence of a "genuine issue of material fact for determination at the hearing." Commission Rule 1.251(a)(1), 47 CFR § 1.251(a)(1). Conversely, the purpose of discovery is to allow the parties access to all relevant information precisely so that, among other things, they can respond to potentially dispositive motions. NYC Telecom should not be required to respond to SBC's Motion for Summary Decision before it has received *any* discovery from SBC, let alone discovery that would potentially affect the decision of that motion. To hold

¹ Information about SBC's document retention and destruction policies assumes particular importance if SBC fails to produce, e.g., the categories of documents that one would expect for the time period relevant to the Motion for Summary Decision.

otherwise would effectively reward SBC for interposing “completely frivolous” objections to valid discovery requests, “tactics” that your Honor found to “border on an abuse of the Commission’s processes” Order n.1. Indeed, such an outcome would be particularly unfair in the circumstances of this case, where SBC seeks to prevail by proving a negative proposition, i.e., that NYC Telecom did not pay EUCL charges for the time period that SBC contends is relevant.

NYC’s requested extension from July 31 to August 16, 2001 is clearly reasonable. NYC Telecom does not know the volume of materials that it will receive from SBC on or before August 2. It is also possible that questions will arise concerning the adequacy of SBC’s interrogatory responses or the scope of SBC’s document production, particularly if SBC produces only a few boxes of documents in response to 26 separate document requests.

SBC will presumably argue, as it has in the past, that NYC Telecom “should have” the materials in question and, consequently, that there is no need for an extension. Under any view, however, conjecture about the information that is available to an adverse party is not a basis for requiring that party to brief a dispositive motion before it has received *any* discovery, much less discovery on the issues raised in the motion.

Nor will SBC suffer any conceivable prejudice if the extension is granted. If NYC Telecom files its opposition papers on August 16, 2001, there will be more than adequate time for Your Honor to consider the issues raised in that motion prior to the damages hearing scheduled for October 15, 2001. Indeed, SBC’s motion presumably would be the first motion on the substantive damages issues to receive such consideration, as there are no other pending motions of this nature. Parties are permitted to file summary decision motions up to “20 days prior to the date set for commencement of the hearing.” Commission Rule 1.251(a)(1), 47 CFR § 1.251(a)(1).

For all of the above reasons, NYC Telecom respectfully requests that Your Honor grant its motion for an extension of time until August 16, 2001 to file oppose SBC's Motion for Summary Decision.

Dated: July 24, 2001

Respectfully submitted,

By Albert Kramer /CA

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2001, a copy of the foregoing was served by facsimile (without attachments) and first-class mail, postage prepaid (with attachments), on William A. Brown, Esquire, and Davida M. Grant, Esquire, Southwestern Bell Telephone Company, 1401 I Street, N.W., Suite 1100, Washington, D.C. 20005, and by hand-delivery and/or first-class mail, postage prepaid, as indicated below, on the following parties:

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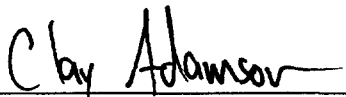
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